



## 2016 DOMESTIC VIOLENCE LAWS

By: Michelle Kirby, Senior Legislative Attorney

### CIVIL PROTECTION ORDERS

*Civil Restraining Order* - A victim may apply for a civil restraining order for relief from physical abuse, stalking, or a pattern of threatening from another family or household member ([CGS § 46b-15](#)).

*Civil Protection Order* - A victim of sexual abuse, sexual assault, or stalking may apply for a civil protection order if he or she is not eligible for the restraining order described above ([CGS § 46b-16a](#)).

*Ex Parte Order* - An order issued before a hearing, when one of the parties is not present.

*Judicial Branch's Service Tracking System* - enables state marshals to record the service of process in civil restraining order cases. It uses a 24-hour, toll-free voice recognition system that marshals can access by cell phone. The system updates state and national protection order files and faxes a notice of service to corresponding police departments as soon as service information is recorded.

### ISSUE

Summarize the domestic violence laws enacted in the 2016 legislative session.

### SUMMARY

During the 2016 legislative session, the legislature enacted two major pieces of legislation that address the issue of domestic violence effective October 1, 2016, [PA 16-34](#) and [PA 16-105](#). Below is a summary of the acts' major provisions followed by detailed analyses.

Among other things, [PA 16-34](#) makes various changes related to orders of protection (see side bar), service of process, and firearms and ammunition possession.

With regard to civil restraining orders, this law, among other things:

1. revised the order application form to allow an applicant to indicate whether the respondent (accused) has a firearm eligibility or ammunition certificate;
2. reduced, from five to three, the number of days before a hearing date that process must be served;
3. requires a proper officer (i.e., person authorized to serve process), in certain circumstances, to request that a state or municipal police officer be

present when service is executed; and

4. continues an ex parte order (i.e., an order issued without a hearing) beyond the initial hearing date under certain circumstances.

The act extended certain firearms and ammunition prohibitions to a person subject to an ex parte civil restraining or protection order issued in a case involving physical force. It made a person ineligible to possess firearms or ammunition upon receipt of legal notice that he or she is subject to an ex parte order and made it a class C felony for such a person to violate the firearms or ammunition transfer, delivery, or surrender requirements, as was already the case for anyone subject to any other order of protection.

It also shortened, from two business days to 24 hours, the deadline by which a person who becomes subject to any type of order of protection in a case involving physical force must transfer, deliver, or surrender his or her firearms and ammunition to law enforcement agencies or the Department of Emergency Services and Public Protection (DESPP). It provided for the request and return of firearms and ammunition when an order expires or is rescinded.

[PA 16-105](#) made changes to certain court operations that pertain to domestic violence counseling, postponing restraining order hearings, seeking protection orders on behalf of a minor, and information provided at hearings.

## **[PA 16-34](#) (§ 3) — CIVIL RESTRAINING ORDERS**

### ***Application***

The act expands the type of gun-related information that may be included in an application for a civil restraining order. Under prior law, the form had to allow the applicant to indicate only whether the respondent held a gun permit or possessed firearms or ammunition. Under the act, the form must also allow the applicant to indicate whether the respondent has a handgun or long gun eligibility certificate or an ammunition certificate.

### ***Initial Hearing Date***

Under existing law, the court must hold a hearing within 14 days after receiving a restraining order application. Under the act, the court must order a hearing within seven days after issuing an ex parte order if an application indicates that the respondent holds a gun permit, possesses firearms or ammunition, or has a handgun or long gun eligibility certificate or an ammunition certificate.

The act reduces, from five to three, the number of days before a hearing by which a respondent must be served notice of the hearing, the application and accompanying affidavits, and any ex parte order.

### ***Ex Parte Order Extension***

The act sets conditions under which the court can continue an ex parte order. Under existing law, an ex parte order is generally in effect until the hearing date. The act requires the court to continue the order for up to 14 days from the original hearing date if the (1) respondent has not been served by the date of the hearing and (2) applicant requests the extension. The court must do so based on the information in the original application.

Under the act, the court must prepare a new hearing and notice order containing the new hearing date. The respondent must be served with the new hearing and notice order at least three days before the new hearing date.

### ***Service of Process***

The act requires the officer responsible for serving an ex parte order to take certain steps when the court issues an ex parte order if the application indicates that the respondent (1) holds a gun permit, a handgun or long gun eligibility certificate, or an ammunition certificate or (2) possesses ammunition or one or more firearms. In such a case, the proper officer must, whenever possible, provide in-hand service and, before serving the order:

1. notify the law enforcement agency of the town in which the respondent will be served of the time and place of service;
2. send, or cause to be sent by fax or other means, a copy of the application, applicant's affidavit, ex parte order, and hearing notice to the law enforcement agency; and
3. request the presence of a police officer from the appropriate law enforcement agency when service is executed.

The act allows the law enforcement agency (State Police or any municipal department), on receiving such a request, to designate a police officer to be present when the proper officer serves process.

### **PA 16-34 (§§ 3 & 6) — SERVICE TRACKING**

The act requires state marshals and other proper officers, as soon as possible but no more than two hours after serving a civil restraining or protection order, to enter the date, time, and method of service into the judicial branch's internet-based service tracking system. If the respondent is not served before the date of the scheduled hearing, the officer must indicate in the system that service was unsuccessful.

### **PA 16-34 (§ 6) — COPY OF ORDER TO DESPP**

By law, the court must send, by fax or other means, a copy of any civil restraining or protection order (including an ex parte order) or the information in the order, within 48 hours of its issuance, to the law enforcement agency or agencies for the towns where the applicant and respondent reside and where the applicant works. Under the act, the court must also send such a copy or information to the DESPP commissioner immediately after issuing a civil protection order.

### **PA 16-34 (§§ 4 & 5) — COURT SPACE, APPLICATION PROCESS, AND EDUCATIONAL MATERIAL**

#### ***Civil Restraining Order***

The act requires the chief court administrator (administrator), where feasible, to allocate space for a meeting between state marshals and restraining order applicants in each Superior Court to which the service of a restraining order may be returned.

The act also requires the administrator to revise and simplify the process for filing a civil restraining order application. Under the act, the administrator must ensure that anyone seeking to apply for relief from abuse receives a one-page, plain language explanation of how to apply for a restraining order. By law, an applicant for such an order must be a family or household member. A non-household or non-family member may only apply for a civil protection order.

#### ***Civil Restraining and Civil Protection Orders***

Under the act, the administrator must also collect data annually on the:

1. number of restraining and protection orders issued,
2. number of these orders that applicants did not pick up from the court,
3. method used when service was successful,
4. number of requests that a police officer be present when service of process for a restraining order is executed, and
5. number of orders that expired or were dismissed because the respondent could not be served.

The act also requires the administrator to develop educational materials on the risk warrant process relating to someone who poses a risk of imminent personal injury to himself, herself, or others. (A risk warrant is a warrant to search a specific person, place, or thing to seize any firearms and ammunitions.) The administrator must make this educational material available to the public.

### **PA 16-34 (§ 2) — STATE MARSHAL COMMISSION RULES**

The act requires, rather than allows, the state marshal commission to adopt rules it deems necessary to conduct its internal affairs. Under the act, this includes rules that provide for:

1. timely, consistent, and reliable access to a state marshal for civil restraining order applicants (but not for civil protection order applicants),
2. services to people with limited English proficiency or who are deaf or hearing impaired, and
3. service of process using a clear and accurate copy of the original document.

### **PA 16-34 (§ 7) — ELIGIBILITY TO POSSESS FIREARMS AND AMMUNITION**

Under existing law, a person is ineligible to possess firearms and ammunition when the court issues a civil restraining or protection order against him or her after notice and a hearing in a case involving the use, attempted use, or threatened use of physical force against another person.

Under the act, in the same type of case, the respondent becomes ineligible to possess firearms and ammunition when he or she receives notice of an ex parte order.

### **PA 16-34 (§§ 7, 15 & 16) — TRANSFER, DELIVERY, OR SURRENDER OF FIREARMS AND AMMUNITION**

#### ***Time Frame for Transfer, Delivery, or Surrender (§ 7)***

The act shortens the deadline by which a person must transfer, deliver, or surrender his or her firearms and ammunition if he or she becomes ineligible to possess them after becoming subject to a civil restraining order, civil protection order, criminal protective order, or foreign order of protection involving force.

Under prior law, the deadline was within two business days after the person became ineligible. Under the act, the deadline is within 24 hours of becoming ineligible.

The act also extends its gun-related surrender requirements to people subject to an ex parte order.

### ***Delivery or Surrender to Police Department (§ 7)***

The act gives people who must surrender their firearms or ammunition the option of surrendering them to a municipal police department on the DESPP commissioner's behalf, instead of just to the commissioner. It requires the police department, as is already the case for the commissioner, to exercise due care when receiving and holding the weapons.

The act removes prior law's option that allowed anyone subject to such an order to transfer ammunition to another person eligible to possess it.

By law, a person or his or her legal representative may, up to one year after delivering or surrendering his or her firearms or ammunition to DESPP, ask the commissioner to transfer them to an eligible person. The commissioner must conduct the transfer within 10 days of receiving the request (except in a case involving a protection order, in which case weapons may only be transferred to a federally licensed dealer pursuant to a sale). The act makes a conforming change allowing the person or legal representative to request the police department to make such a transfer.

By law, the commissioner must destroy any firearms or ammunition that has not been transferred after one year. Under the act, this also applies to police departments to which weapons are delivered or surrendered.

### ***Return of Firearms and Ammunition (§ 7)***

Under the act, a person subject to a restraining order, protective order, foreign order of protection, or civil protection order who has delivered or surrendered any pistol, revolver, or other firearm or ammunition to the DESPP commissioner or a local police department, may request the return of the firearm or ammunition when such an order expires or is rescinded. The person making the request must provide notification of the order's expiration or rescission to the commissioner or department.

Within five business days after receiving the request, the act requires the commissioner or department to review the request. They must make any firearm or ammunition available for retrieval if they confirm that the order expired or was rescinded and that the requestor (1) is not otherwise disqualified from possessing the firearm or ammunition and (2) was legally entitled to possess the firearm or ammunition when it was delivered or surrendered.

### ***Violations (§§ 7, 15 & 16)***

By law, a person subject to an order of protection who violates the firearms and ammunition transfer, delivery, or surrender requirement is guilty of criminal possession of a firearm or ammunition, as applicable. The act extends these penalties to people who commit such violations while subject to an ex parte order.

By law, criminal possession of a firearm or ammunition is a class C felony, punishable by up to 10 years in prison with a two-year mandatory minimum.

### **PA 16-34 (§§ 8-14) — ISSUING, REVOKING, AND REINSTATING GUN AND AMMUNITION CREDENTIALS**

The act expressly states that the DESPP commissioner must not issue a gun permit, handgun eligibility certificate, or long gun eligibility certificate to anyone subject to an ex parte order issued in a case involving the use, attempted use, or threatened use of physical force against another person. By law, the commissioner may revoke a permit or certificate for any event that would have disqualified the holder from being issued such a credential.

Under the act, DESPP must reinstate a gun or ammunition credential it revoked based on an ex parte order if the order expires and the respondent, who is not otherwise disqualified, notifies DESPP and DESPP verifies the expiration.

### **PA 16-34 (§ 17) — PROTOCOL FOR GUN AND AMMUNITION TRANSFER, DELIVERY, OR SURRENDER**

Existing law requires the DESPP commissioner, in conjunction with the chief state's attorney and the Connecticut Police Chiefs Association, to develop a protocol to ensure that people who become ineligible to possess firearms transfer, deliver, or surrender them, as appropriate. The act requires the commissioner to update the protocol to apply its provisions.

### **PA 16-105 – COURT OPERATIONS**

#### ***Notice of Domestic Violence Counseling***

PA 16-105 (§§ 4 & 5) made changes to the information about domestic violence counselors and counseling organizations that the court must provide to people who apply for a restraining order in a domestic violence situation. It also specified that courts must give this information, and information on how to continue an order beyond its initial period, to every restraining order applicant.

### ***Postponed Hearings and Ex Parte Civil Protection Orders***

Under [PA 16-105](#) (§ 6) if either party requests a postponement of a hearing on an application for a civil protection order, any ex parte order issued by the court does not continue unless the parties agree to it or the court orders it for good cause

### ***Restraining and Civil Protection Orders for Minors***

[PA 16-105](#) (§§ 4 & 6) prohibits a parent, guardian, or responsible adult who brings an application for a restraining or civil protection order as next friend of someone under age 18 from speaking for the applicant at a hearing except for good cause showing why the applicant cannot speak on his or her own behalf. But such a person can testify as a witness at a hearing on the application.

### ***Restraining Orders—Information at Hearings***

Under [PA 16-105](#) (§ 4) when issuing an ex parte order, the court can consider relevant, publicly available court records. At a hearing on the application, the court may also consider a report from the Judicial Branch's family services unit that may include (1) existing or prior protection orders in the protection order registry, (2) the respondent's outstanding arrest warrants and risk assessment from the branch's Court Support Services Division (CSSD), (3) information about a pending or disposed family matters case involving the applicant and respondent, and (4) information on pending or past criminal cases in which the respondent was convicted of a violent crime.

MK:tjo